

1 decide. [citation omitted]. The other elements, including breach and causation,
2 are factual issues usually decided by the jury. [citation omitted]. [However,]
3 Although breach and causation are factual matters, summary judgment may be
4 appropriate if no reasonable juror could conclude that the standard of care was
breached or that the damages were proximately caused by the defendant's
conduct. [citation omitted].

5 *Gipson*, 150 P.3d at 230 ¶ 9 & n. 1.


6 Doc. 69 at 7, n. 6.

7 In his three paragraph motion for reconsideration, Plaintiff never addresses this case.
8 To the extent Plaintiff is arguing that merely by impliedly alleging negligence he is entitled
9 to a jury trial, that argument is not a correct statement of the law and reconsideration on that
10 theory is denied. Alternatively, to the extent Plaintiff is arguing that there is a disputed issue
11 of fact that precluded summary judgment, this Court discussed its basis for granting summary
12 judgment extensively in its Order at Doc. 69, and finds no basis for reconsideration in
13 Plaintiff's pending motion.

14 Accordingly,

15 **IT IS ORDERED** that Plaintiff's motion for reconsideration (Doc. 71) is denied.

16 DATED this 13th day of November, 2013.

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20 **James A. Teilborg**
21 **Senior United States District Judge**
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